IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 24 of 2001

with

CRIMINAL MISC.APPLICATION No 659 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GORDHANBHAI GOVINDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 24 of 2001

MR NK MAJMUDAR for Petitioner

MR HH PATEL, APP, for Respondent No. 1

2. Criminal Misc.ApplicationNo 659 of 2001

MR MP SHAH for Petitioner

MR NK MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/03/2001

ORAL JUDGEMENT

Heard learned counsel for the parties.

2 In this petition a prayer is made for quashing and setting aside the order dated 10.01.2001 of Additional Sessions Judge, Surat, below Exh.7, in Misc. Criminal Application (Bail) No.1/2001. A further prayer has been made for allowing of this application and for a direction to the learned Additional Sessions Judge, Surat, to hear the bail application only after considering the video cassette as part of the police record and after perusing and demonstration of the same.

3 The facts of the case are that the petitioner is the original complainant and he had filed the FIR which was registered as CR No.398 of 2000 for the offences punishable under Sections 302, 498A and 144 of IPC at Sub-Division - Varachha Police Station of District Surat. This complaint is filed against the following persons:-

(1) Karamsibhai Meghanbhai Kukadia
(2) Ambaben Karamsibhai Kukadia
(3) Kalubhai Kukadia
(4) Dipaben Kukadia

The daughter of the petitioner named Nainaben was married to Sureshbhai Kararmsibhai Kukadia, son of original accused no.1 - Karamsibhai Kukadia. The daughter of the petitioner was residing with her father-in-law, Karamsibhai Kukadia (accused no.1), her brother-in-law - Kalubhai Kukadia (accused no.3), Dahyaben, wife of Kalubhai, and her mother-in-law, Ambaben Kukadia (accused no.2) at Surat. The daughter of the petitioner was subjected to cruelty and inhuman treatment by the father-in-law, Karamsibhai Kukadia, as the petitioner was informed on number of occasions by his daughter. The father-in-law tried to misbehave with his daughter Nainaben on number of occasions and also tried to commit rape with his daughter. That accused no.2 Ambaben Kukadia (mother-in-law), accused no.3 - Kalubhai Kukadia (brother-in-law), and Dayaben Kalubhai, wife of the brother-in-law, were also used to harass and torture his daughter and used to demand money and used to compel her to make necessary arrangement from petitioner's place. Due to inhuman attitude of in-laws of the daughter of the petitioner, the petitioner and his other relatives intervened and therefore an alternative separate residence was arranged and the couple started to live separately in city of Surat. Thereafter, they

shifted to Bhavnagar. However, due to the pressure of accused no.1 they came back and started residing in Surat. There was tremendous torture and pressure by accused no.1 to the petitioner's daughter and she was subjected to cruelty and inhuman treatment and that it is a shocking case that the father-in-law is taking physical liberty and trying to keep illicit relationship with her and an attempt of rape was also made by him. Ultimately, on an unfortunate day when the FIR was lodged, the accused no.1 with the help of the other accused committed a cold-blooded murder of his daughter Nainaben.

4 The concerned investigation officer has visited the site and drawn a panchnama. He recorded the statements of the witnesses. The petitioner had taken the photographs and video cassette was also prepared. The photographs and video cassette reveal the position of the dead body and other position of the room in which Nainaben was killed and they are important piece of evidence. It is not in dispute between the learned counsel for the parties that the photographs and video cassette are handed over by the petitioner to the investigation officer and the same are part of the investigation papers. Accused no.4 preferred bail application before the Court. However, it is the grievance of the petitioner that despite the request made by him to place the photographs and video cassette before the Court the same were not placed before the Court. The bail application filed by the accused no.4 was allowed. Thereafter, original accused father-in-law and brother-in-law have filed bail applications before the Court. The investigation is yet not completed. During the hearing of the said bail application, the petitioner preferred an application below exh.7 and prayed that the video cassette which goes to the root of the matter and which would reveal the commission of heinous crime be taken on record and considered in the Court. However, when the police papers were called for, the police have not brought the video cassette. This application exh.7 was rejected under the impugned order dated 10.01.2001. Hence, this Special Criminal Application.

5 The learned counsel for the petitioner contended that the video cassette is relevant piece of evidence. He contends that it is true that this video cassette is prepared by the petitioner himself but nevertheless it had been prepared at the site i.e. the house of the accused and it has to be taken to be a part of the investigation papers and to be perused by the Court before deciding the bail application filed by the accused. It has next been contended that the bail

application has to be decided after considering the police papers. The police papers do not mean the papers prepared by the police only but all other materials produced by the complainant also. It is submitted that this video cassette is produced by the petitioner before the police and it is a part of the police record. It is a relevant material in the matter and without considering the same the learned Court below rejected the application of the petitioner. On the other hand, the learned counsels for respondents strongly opposed this Special Criminal Application.

6 Having heard the learned counsel for the parties I am satisfied that the whole approach of the Additional Sessions Judge, Surat, is not a justice-oriented one. It is true that said video cassette is not produced along with the documentary evidence produced by the police papers in the Court. But, it is not in dispute that this video cassette has been produced before the police by the petitioner and police has taken it into its custody. This video cassette relating to this very offence and it is with the police. In the present case the police has adopted pick and choose method in producing the police papers in the Court. When the police has taken into the custody the video cassette it has to be produced before the Court. It is a stage where the learned Court has to consider all the material which had come on the investigation and then to decide whether it is a fit case for releasing the accused on bail or not. It is true that video cassette is an evidence and it has to be proved. But it is akin to statements of the persons recorded under Section 161 of the Criminal Procedure Code. The statements of the witnesses recorded under Section 161 of the Criminal Procedure Code can be considered by the Court below, this approach of the Court to decline to consider this video cassette on the ground that it amounts to interpretation of evidence at this stage is wholly unjustified. The learned Judge may have seen the video cassette and then to form an opinion whether it is to be relied or not at this stage. But outright rejection of this material which is on the record of the investigating officer in this fashion is not justified. This approach of the learned Additional Sessions Judge, Surat, that the video cassette cannot be used as an evidence at the stage of bail application in a case where the daughter of the petitioner, as per his complaint, is murdered by her in-laws is difficult to be appreciated. The order of the learned Additional Sessions Judge deserves to be quashed and set aside and the same is accordingly quashed and set aside. The police is directed to produce the video cassette in the

Court and the learned Additional Sessions Judge, Surat, is directed to see the video cassette and after considering the other material to decide the bail application in accordance with law.

7 In the result, this Special Criminal Application succeeds and the same is allowed. Rule is made absolute.

8 Before parting with this judgement, I am constrained to observe that this approach of the investigating officer not producing the video cassette along with the other investigation papers in the lower court is wholly unjustified. It is a clear case of pick and choose method adopted by him. The police being the investigation agency, a state owned agency, it has to be act impartially and fairly and it has to produce whatever material it has got in its investigation or produced by the complainant before it. It is for the Court to decide whether the material produced in the Court is to be relied upon or not. The police cannot adopt pick and choose policy. The State of Gujarat is directed to pay costs of this petition to the petitioner which is quantified to Rs.2,000/-.

9 In the main petition decision has been given today after hearing the counsel for the petitioner in Misc. Criminal Application No.659 of 2001. In view of this fact, Misc. Criminal Application No.659 of 2001 has become infructuous and accordingly the same is dismissed.

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